

OPINION
65-488

April 8, 1965 (OPINION)

Mr. Owen T. Owen

Chairman

Workmen's Compensation Bureau

RE: Workmen's Compensation - Economic Opportunity Act - Application

This is in response to your request for an opinion as to whether or not the worker trainees under Title V of the Economic Opportunity Act can be considered employees within the terms of the North Dakota Workmen's Compensation Act. You also ask whether or not there is an employer-employee relationship in the proposed project between the worker trainees and someone like the county or the public welfare board, or with someone within the state so as to bring the worker trainees within the North Dakota Workmen's Compensation Act.

You also ask whether or not the proposed project for Rolette County under Title V of the Economic Opportunity Act creates an employment within the meaning of the North Dakota Workmen's Compensation Act so as to provide coverage for the worker trainees involved.

In section 65-01-02 of the North Dakota Century Code the terms of the Workmen's compensation Act are defined. Subsection 3 thereof defines the term "employment", and is as follows:

3. 'Employment' shall mean employment by the state and all political subdivisions thereof, by all public and quasi-public corporations therein, and all private employments; * * * *."

Subsection 5 of section 65-01-02 of the North Dakota Century Code defines the term "employee", and is as follows:

5. 'Employee' shall mean every person engaged in a hazardous employment under any appointment, contract of hire, or apprenticeship, express or implied, oral or written, and: * * * *."

You will note that the definition includes apprenticeship and in subdivision (3) it includes poor relief workers, except such as are engaged in repaying to counties relief moneys which the counties have been compelled by statute to expend for poor relief. The term "employer" is defined under subsection (7) to mean, amongst other things, the state and all political subdivisions thereof.

The specific facts to be considered in answering the questions above are as follows:

The Public Welfare Board of North Dakota has been delegated the

authority, by the Federal Government of the United States of America, to administer Title V of the Economic Opportunity Act (P.L. 88-452 dated 2-20-64).

The purpose of Title V is to give people who are on welfare, or of a similar financial circumstance, an opportunity to gain work experience and training for the purpose of upgrading their employment potential. The object is to get them back into employment situations with the hope that they will eventually become self supporting. The state public welfare budgetary standards will be utilized in determining need. The project participants will receive 'payment credits' at the prevailing hourly rate for similar work in the community. No participant will be allowed to work more than 40 hours per week or not more than an amount equal to his month's grant. (See B 2522 in Supplemental B Handbook).

Section B 2530 of the same handbook refers to Workmen's Compensation coverage. This is one of the requirements that cannot be waived. The premium for this coverage will be paid for by Federal funds from Title V.

Another requirement that cannot be waived is the health and safety standards. These standards must be maintained on the job site. There must be adequate protection against hazards and adverse activities. Physical examinations are required especially if the County Welfare Board suspects health problems, or if the participant requests it. All necessary safety equipment must be furnished and all rules pertaining to safety must be enforced.

The first Project Proposal, which the Public Welfare Board has received, came from Rolette County, North Dakota in which it is anticipated that approximately 175 worker-trainees will be involved. This is a county wide project and not necessarily restricted to Indians; however, in this case a large majority of the participants will be Indian.

The Rolette County Welfare Board is the sponsor of this project and project participants will be accountable to that agency. It will be necessary for the Rolette County Welfare Board to enlarge its professional staff to administer this program. The County Director will be the 'Overall Project Director.' He will be assisted by a Project Coordinator, a Casework Supervisor, and four Caseworkers. Also required will be six project superintendents and eight foremen. Except for the County Director, all other professional personnel will need to be added to the staff.

The County Welfare Board's responsibility includes the provision of social services to the participants and their families, initial screening, intake process, maintaining casework files and all other pertinent information. It will be responsible for determining need, certification of grants, evaluation of progress of the participant, and follow-up for employment counseling at the termination of the project.

The County Welfare Board will reserve the right to terminate the participation of any worker who, after a reasonable period of probation, proves to be irresponsible or unfit for further work or training.

Projects planned for in the Rolette County proposal are as follows: A. Beautification: This consists mainly of cleaning up the area. Removal of abandoned automobiles will employ about 25 persons. B. Recreational Development: employing about 40 persons. C. Reservation Maintenance of Grounds, Buildings and Utilities project utilizing about 36 people. D. Ancillary Hospital personnel project employing about 25 persons. E. Road Construction and Maintenance will utilize about 25 persons. F. Lake Development will use about 12 people. G. Fire Control and Fire Prevention: the use of 12 people is anticipated.

No project can be extended for more than one year at a time.

Once a project proposal is approved the Federal funds are sent to the Public Welfare Board of North Dakota where the checks are written and mailed to the participant. The entire project is to be financed with Federal funds except when the sponsor furnishes a token contribution, usually in kind.

It is anticipated that there will be other projects developed over the state of North Dakota in the future, although perhaps not of this magnitude. Nonetheless, all communities are eligible to make proposals or to participate if the project proposals are approved by the Federal Government."

The county welfare board apparently has the responsibility of determining who is eligible to participate in this program. It also has the responsibility to determine when the individual shall be terminated from the program. The county welfare board through the county director and its staff will administer the program. The chain of responsibility appears to begin in the Federal government through Title V and from there to the state department and then to the county welfare board. In this respect the county welfare board, being the local administrator and supervisor, would be the "employer."

The fact that the funds are received from the Federal government and disbursed or distributed by the state welfare department does not alter this conclusion. The participants in the program receive "credit payments." Their eligibility to participate is dependent upon meeting certain requirements of Title V, the determination of which is the responsibility of the county welfare board. The status or position of the participants in the program can be considered comparable to an apprenticeship as the term is used in subsection 5 of section 62-01-02 of the North Dakota Century Code, and would also be within the broad sense of the term "poor relief workers" as found in subdivision a(3) of subsection 5.

It is observed that under Section B-2540 of Title V that accurate records must be kept of the work experience projects to include the hourly rate paid for work experience and the exact time in which the work-trainee was on the job and performed services. While not

necessarily controlling it is, however, noted that Title V requires that the participants (employees) in the work project must be adequately protected by workmen's compensation coverage. (Section B-2530). This indicates a presumption of Congress that it considered the relationship of employer and employee to exist.

It is our opinion that the relationship of employer and employee as contemplated by Title 65 of the North Dakota Century Code exists between participants as employees and the county welfare board as employer.

Like any new program, some administrative adjustments might be required but this is largely an internal affair and should be accomplished by the commissioners of the Workmen's Compensation Bureau in exercising sound judgment.

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